

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

NO. 2168  
STATE OF NEBRASKA  
OFFICIAL

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DEPT. OF JUSTICE

July 16, 1982

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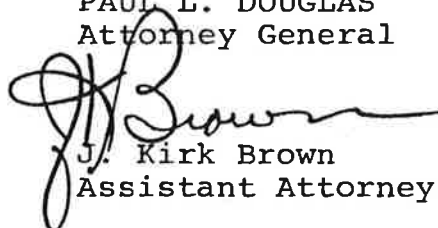
SUBJECT: Nebraska Laws 1982, LB 568  
REQUESTED BY: Stephen L. Von Riesen, Hall County Attorney  
OPINION BY: Paul L. Douglas, Attorney General,  
J. Kirk Brown, Assistant Attorney General  
QUESTION: Do the provisions of LB 568 which mandate certain  
conditions of probation violate the power of the  
courts under the separation of powers doctrine?  
CONCLUSION: No.

You inquire whether, by the creation of mandatory conditions of probation, the Legislature has violated Article II, Constitution of the State of Nebraska, regarding separation of governmental powers. Implicit in this inquiry is the question of whether the courts of this state have inherent power to place a person on probation.

The concept that Nebraska courts have powers of probation in the absence of legislative authorization was rejected in Cooper v. State, 100 Neb. 367, 160 N.W. 92 (1916). That theory was again specifically rejected in State v. Randolph, 183 Neb. 506, 162 N.W.2d 123 (1968). If the Legislature has the sole authority in this state to create the option of probation and to deny probation to specific classes of offenses, in our opinion it does not violate the concept of separation of powers by mandating certain conditions of probation for specific offenses.

Very truly yours,

PAUL L. DOUGLAS  
Attorney General

  
J. Kirk Brown  
Assistant Attorney General

JKB:jmf

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